

AMENDED IN SENATE AUGUST 8, 1996  
AMENDED IN ASSEMBLY MARCH 25, 1996

CALIFORNIA LEGISLATURE—1995–96 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2433**

**Introduced by Assembly Member Harvey**

February 20, 1996

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An act to amend Sections 640.5 and 640.6 of, and to add Section 640.8 to, the Penal Code, relating to graffiti.

LEGISLATIVE COUNSEL'S DIGEST

AB 2433, as amended, Harvey. Graffiti: freeways: penalties.

(1) Under existing law, it is an infraction punishable by a fine not to exceed \$500 and the performance of community service to deface with graffiti or other inscribed material, as defined, certain real or personal property or the interior or exterior of facilities or vehicles of a governmental entity. For second violations of this graffiti provision, existing law makes it a misdemeanor punishable by county jail time, a fine, or the performance of community service. For the third or subsequent violations of this provision, existing law makes it a misdemeanor punishable by imprisonment in a county jail not exceeding one year or the performance of community service.

This bill would provide that, with respect to the first and ~~second~~ 2nd violations, the maximum fine and community service time be doubled. The bill would also provide that, for

the—~~third~~ 3rd or subsequent violation, the maximum community service time be doubled and a fine not to exceed \$3,000 be imposed. The bill would make corresponding increases in the time allotted for completion of the performance of community service time.

(2) Existing law provides that any person who violates certain provisions regarding vandalism and graffiti offenses on or within 100 feet of a highway, or its appurtenances, as specified, is guilty of a misdemeanor, punishable as specified.

This bill additionally would provide that any person who violates those provisions on a freeway or its appurtenances, as specified, is guilty of a misdemeanor punishable by imprisonment in a county jail not to exceed one year, by a fine not to exceed \$5,000, or by both the imprisonment and fine. The bill would authorize the court to order, as a condition of probation, the defendant to perform community service not to exceed 480 hours over a period not to exceed 420 days during a time other than during his or her hours of school attendance or employment.

Because this bill would increase the punishments for existing crimes, it would impose a state-mandated local program.

*(3) This bill would incorporate additional changes to Sections 640.5 and 640.6 of the Penal Code proposed by AB 2295, to be operative only if AB 2295 and this bill are both chaptered and become effective January 1, 1997, and this bill is chaptered last.*

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 640.5 of the Penal Code is  
2 amended to read:

1 640.5. (a) Any person who defaces with graffiti or  
2 other inscribed material the interior or exterior of the  
3 facilities or vehicles of a governmental entity, as defined  
4 by Section 811.2 of the Government Code, or the interior  
5 or exterior of the facilities or vehicles of a public  
6 transportation system as defined by Section 99211 of the  
7 Public Utilities Code, or the interior or exterior of the  
8 facilities of or vehicles operated by entities subsidized by  
9 the Department of Transportation or the interior or  
10 exterior of any leased or rented facilities or vehicles for  
11 which any of the above entities incur costs of less than two  
12 hundred fifty dollars (\$250) for cleanup, repair, or  
13 replacement is guilty of an infraction, punishable by a fine  
14 not to exceed one thousand dollars (\$1,000) and by a  
15 minimum of 48 hours of community service for a total  
16 time not to exceed 200 hours over a period not to exceed  
17 180 days, during a time other than during his or her hours  
18 of school attendance or employment. This subdivision  
19 does not preclude application of Section 594.

20 (b) If the person has been convicted previously of an  
21 infraction under subdivision (a) or has a prior conviction  
22 of Section 594, 594.3, 594.4, 640.6, or 640.7, the offense is a  
23 misdemeanor, punishable by imprisonment in a county  
24 jail not to exceed six months, by a fine not to exceed two  
25 thousand dollars (\$2,000), or by both that imprisonment  
26 and fine. As a condition of probation, the court shall order  
27 the defendant to perform a minimum of 96 hours of  
28 community service not to exceed 400 hours over a period  
29 not to exceed 350 days during a time other than during his  
30 or her hours of school attendance or employment.

31 (c) Every person who, having been convicted  
32 previously under this section or Section 594, 594.3, 594.4,  
33 640.6, or 640.7, or any combination of these offenses, on  
34 two separate occasions, and having been incarcerated  
35 pursuant to a sentence, a conditional sentence, or a grant  
36 of probation for at least one of the convictions, is  
37 subsequently convicted under this section, shall be  
38 punished by imprisonment in a county jail not to exceed  
39 one year, by a fine not to exceed three thousand dollars  
40 (\$3,000), or by both that imprisonment and fine. As a

1 condition of probation, the court may order the  
2 defendant to perform community service not to exceed  
3 600 hours over a period not to exceed 480 days during a  
4 time other than during his or her hours of school  
5 attendance or employment.

6 (d) (1) Upon conviction of any person under  
7 subdivision (a), the court, in addition to any punishment  
8 imposed pursuant to subdivision (a), (b), or (c), at the  
9 victim's option, may order the defendant to perform the  
10 necessary labor to clean up, repair, or replace the  
11 property damaged by that person.

12 (2) If a minor is personally unable to pay any fine  
13 levied for violating subdivision (a), (b), or (c), the parent  
14 or legal guardian of the minor shall be liable for payment  
15 of the fine. A court may waive payment of the fine or any  
16 part thereof by the parent or legal guardian upon a  
17 finding of good cause.

18 (e) Any fine levied for a violation of subdivision (a),  
19 (b), or (c) shall be credited by the county treasurer  
20 pursuant to Section 1463.29 to the governmental entity  
21 having jurisdiction over, or responsibility for, the facility  
22 or vehicle involved, to be used for removal of the graffiti  
23 or other inscribed material or replacement or repair of  
24 the property defaced by the graffiti or other inscribed  
25 material. Before crediting these fines to the appropriate  
26 governmental entity, the county may determine the  
27 administrative costs it has incurred pursuant to this  
28 section, and retain an amount equal to those costs.

29 Any community service which is required pursuant to  
30 subdivision (a), (b), or (c) of a person under the age of  
31 18 years may be performed in the presence, and under  
32 the direct supervision, of the person's parent or legal  
33 guardian.

34 (f) As used in this section, the term "graffiti or other  
35 inscribed material" includes any unauthorized  
36 inscription, word, figure, mark, or design that is written,  
37 marked, etched, scratched, drawn, or painted on real or  
38 personal property.

39 *SEC. 1.5. Section 640.5 of the Penal Code is amended*  
40 *to read:*

1 640.5. (a) (1) Any person who defaces with graffiti  
 2 or other inscribed material the interior or exterior of the  
 3 facilities or vehicles of a governmental entity, as defined  
 4 by Section 811.2 of the Government Code, or the interior  
 5 or exterior of the facilities or vehicles of a public  
 6 transportation system as defined by Section 99211 of the  
 7 Public Utilities Code, or the interior or exterior of the  
 8 facilities of or vehicles operated by entities subsidized by  
 9 the Department of Transportation or the interior or  
 10 exterior of any leased or rented facilities or vehicles for  
 11 which any of the above entities incur costs of less than two  
 12 hundred fifty dollars (\$250) for cleanup, repair, or  
 13 replacement is guilty of an infraction, punishable by a fine  
 14 not to exceed ~~five hundred dollars (\$500)~~ *one thousand*  
 15 *dollars (\$1,000)* and by a minimum of ~~24~~ 48 hours of  
 16 community service for a total time not to exceed ~~100~~ 200  
 17 hours over a period not to exceed ~~90~~ 180 days, during a  
 18 time other than ~~during~~ his or her hours of school  
 19 attendance or employment. This subdivision does not  
 20 preclude application of Section 594.

21 (2) *In lieu of the community service required*  
 22 *pursuant to paragraph (1), the court may, if a jurisdiction*  
 23 *has adopted a graffiti abatement program as defined in*  
 24 *subdivision (f) of Section 594, order the defendant, and*  
 25 *his or her parents or guardians if the defendant is a minor,*  
 26 *to keep a specified property in the community free of*  
 27 *graffiti for 90 days. Participation of a parent or guardian*  
 28 *is not required under this paragraph if the court deems*  
 29 *this participation to be detrimental to the defendant, or*  
 30 *if the parent or guardian is a single parent who must care*  
 31 *for young children.*

32 (b) (1) If the person has been convicted previously of  
 33 an infraction under subdivision (a) or has a prior  
 34 conviction of Section 594, 594.3, 594.4, 640.6, or 640.7, the  
 35 offense is a misdemeanor, punishable by imprisonment in  
 36 a county jail not to exceed six months, by a fine not to  
 37 exceed ~~one thousand dollars (\$1,000)~~ *two thousand*  
 38 *dollars (\$2,000)*, or by both that imprisonment and fine.  
 39 As a condition of probation, the court shall order the  
 40 defendant to perform a minimum of ~~48~~ 96 hours of

1 community service not to exceed~~200~~ 400 hours over a  
2 period not to exceed~~180~~ 350 days during a time other than  
3 ~~during~~ his or her hours of school attendance or  
4 employment.

5 (2) *In lieu of the community service required*  
6 *pursuant to paragraph (1), the court may, if a jurisdiction*  
7 *has adopted a graffiti abatement program as defined in*  
8 *subdivision (f) of Section 594, order the defendant, and*  
9 *his or her parents or guardians if the defendant is a minor,*  
10 *as a condition of probation, to keep a specified property*  
11 *in the community free of graffiti for 180 days.*  
12 *Participation of a parent or guardian is not required*  
13 *under this paragraph if the court deems this participation*  
14 *to be detrimental to the defendant, or if the parent or*  
15 *guardian is a single parent who must care for young*  
16 *children.*

17 (c) (1) Every person who, having been convicted  
18 previously under this section or Section 594, 594.3, 594.4,  
19 640.6, or 640.7, or any combination of these offenses, on  
20 two separate occasions, and having been incarcerated  
21 pursuant to a sentence, a conditional sentence, or a grant  
22 of probation for at least one of the convictions, is  
23 subsequently convicted under this section, shall be  
24 punished by imprisonment in a county jail not to exceed  
25 one year, *by a fine not to exceed three thousand dollars*  
26 *(\$3,000), or by both that imprisonment and fine.* As a  
27 condition of probation, the court may order the  
28 defendant to perform community service not to exceed  
29 ~~300~~ 600 hours over a period not to exceed~~240~~ 480 days  
30 during a time other than~~during~~ his or her hours of school  
31 attendance or employment.

32 (2) *In lieu of the community service that may be*  
33 *ordered pursuant to paragraph (1), the court may, if a*  
34 *jurisdiction has adopted a graffiti abatement program as*  
35 *defined in subdivision (f) of Section 594, order the*  
36 *defendant, and his or her parents or guardians if the*  
37 *defendant is a minor, as a condition of probation, to keep*  
38 *a specified property in the community free of graffiti for*  
39 *240 days. Participation of a parent or guardian is not*  
40 *required under this paragraph if the court deems this*

1 *participation to be detrimental to the defendant, or if the*  
2 *parent or guardian is a single parent who must care for*  
3 *young children.*

4 (d) (1) Upon conviction of any person under  
5 subdivision (a), the court, in addition to any punishment  
6 imposed pursuant to subdivision (a), (b), or (c), at the  
7 victim's option, may order the defendant to perform the  
8 necessary labor to clean up, repair, or replace the  
9 property damaged by that person.

10 (2) If a minor is personally unable to pay any fine  
11 levied for violating subdivision (a), (b), or (c), the parent  
12 or legal guardian of the minor shall be liable for payment  
13 of the fine. A court may waive payment of the fine or any  
14 part thereof by the parent or legal guardian upon a  
15 finding of good cause.

16 (e) Any fine levied for a violation of subdivision (a),  
17 (b), or (c) shall be credited by the county treasurer  
18 pursuant to Section 1463.29 to the governmental entity  
19 having jurisdiction over, or responsibility for, the facility  
20 or vehicle involved, to be used for removal of the graffiti  
21 or other inscribed material or replacement or repair of  
22 the property defaced by the graffiti or other inscribed  
23 material. Before crediting these fines to the appropriate  
24 governmental entity, the county may determine the  
25 administrative costs it has incurred pursuant to this  
26 section, and retain an amount equal to those costs.

27 Any community service which is required pursuant to  
28 subdivision (a), (b), or (c) of a person under the age of  
29 18 years may be performed in the presence, and under  
30 the direct supervision, of the person's parent or legal  
31 guardian.

32 (f) As used in this section, the term "graffiti or other  
33 inscribed material" includes any unauthorized  
34 inscription, word, figure, mark, or design that is written,  
35 marked, etched, scratched, drawn, or painted on real or  
36 personal property.

37 (g) *The court may order any person ordered to*  
38 *perform community service or graffiti removal pursuant*  
39 *to subdivision (a), (b), (c), or (d) to undergo counseling.*

1 SEC. 2. Section 640.6 of the Penal Code is amended to  
2 read:

3 640.6. (a) Except as provided in Section 640.5, any  
4 person who defaces with graffiti or other inscribed  
5 material any real or personal property not his or her own,  
6 when the amount of the defacement, damage, or  
7 destruction is less than two hundred fifty dollars (\$250),  
8 is guilty of an infraction, punishable by a fine not to  
9 exceed one thousand dollars (\$1,000). This subdivision  
10 does not preclude application of Section 594.

11 In addition to the penalty set forth in this section, the  
12 court shall order the defendant to perform a minimum of  
13 48 hours of community service not to exceed 200 hours  
14 over a period not to exceed 180 days during a time other  
15 than during his or her hours of school attendance or  
16 employment.

17 (b) If the person has been convicted previously of an  
18 infraction under subdivision (a) or has a prior conviction  
19 of Section 594, 594.3, 594.4, 640.5, or 640.7, the offense is a  
20 misdemeanor, punishable by not to exceed six months in  
21 a county jail, by a fine not to exceed two thousand dollars  
22 (\$2,000), or by both that imprisonment and fine. As a  
23 condition of probation, the court shall order the  
24 defendant to perform a minimum of 96 hours of  
25 community service not to exceed 400 hours over a period  
26 not to exceed 350 days during a time other than during his  
27 or her hours of school attendance or employment.

28 (c) Every person who, having been convicted  
29 previously under this section or Section 594, 594.3, 594.4,  
30 640.5, or 640.7, or any combination of these offenses, on  
31 two separate occasions, and having been incarcerated  
32 pursuant to a sentence, a conditional sentence, or a grant  
33 of probation for at least one of the convictions, is  
34 subsequently convicted under this section, shall be  
35 punished by imprisonment in a county jail not to exceed  
36 one year, by a fine not to exceed three thousand dollars  
37 (\$3,000), or by both that imprisonment and fine. As a  
38 condition of probation, the court may order the  
39 defendant to perform community service not to exceed  
40 600 hours over a period not to exceed 480 days during a



1 time other than during his or her hours of school  
2 attendance or employment.

3 (d) Upon conviction of any person under subdivision  
4 (a), the court, in addition to any punishment imposed  
5 pursuant to subdivision (a), (b), or (c), at the victim's  
6 option, may order the defendant to perform the  
7 necessary labor to clean up, repair, or replace the  
8 property damaged by that person.

9 (e) If a minor is personally unable to pay any fine  
10 levied for violating subdivision (a), (b), or (c), the parent  
11 or legal guardian of the minor shall be liable for payment  
12 of the fine. A court may waive payment of the fine or any  
13 part thereof by the parent or legal guardian upon a  
14 finding of good cause.

15 Any community service which is required pursuant to  
16 subdivision (a), (b), or (c) of a person under the age of  
17 18 years may be performed in the presence, and under  
18 the direct supervision, of the person's parent or legal  
19 guardian.

20 (f) As used in this section, the term "graffiti or other  
21 inscribed material" includes any unauthorized  
22 inscription, word, figure, mark, or design that is written,  
23 marked, etched, scratched, drawn, or painted on real or  
24 personal property.

25 *SEC. 2.5. Section 640.6 of the Penal Code is amended*  
26 *to read:*

27 640.6. (a) (1) Except as provided in Section 640.5,  
28 any person who defaces with graffiti or other inscribed  
29 material any real or personal property not his or her own,  
30 when the amount of the defacement, damage, or  
31 destruction is less than two hundred fifty dollars (\$250),  
32 is guilty of an infraction, punishable by a fine not to  
33 exceed ~~five hundred dollars (\$500)~~ *one thousand dollars*  
34 *(\$1,000)*. This subdivision does not preclude application  
35 of Section 594.

36 In addition to the penalty set forth in this section, the  
37 court shall order the defendant to perform a minimum of  
38 ~~24~~ 48 hours of community service not to exceed ~~100~~ 200  
39 hours over a period not to exceed ~~90~~ 180 days during a

1 time other than ~~during~~ his or her hours of school  
2 attendance or employment.

3 (2) *In lieu of the community service required*  
4 *pursuant to paragraph (1), the court may, if a jurisdiction*  
5 *has adopted a graffiti abatement program as defined in*  
6 *subdivision (f) of Section 594, order the defendant, and*  
7 *his or her parents or guardians if the defendant is a minor,*  
8 *to keep a specified property in the community free of*  
9 *graffiti for 90 days. Participation of a parent or guardian*  
10 *is not required under this paragraph if the court deems*  
11 *this participation to be detrimental to the defendant, or*  
12 *if the parent or guardian is a single parent who must care*  
13 *for young children.*

14 (b) (1) If the person has been convicted previously of  
15 an infraction under subdivision (a) or has a prior  
16 conviction of Section 594, 594.3, 594.4, 640.5, or 640.7, the  
17 offense is a misdemeanor, punishable by not to exceed six  
18 months in a county jail, by a fine not to exceed ~~one~~  
19 ~~thousand dollars (\$1,000)~~ two thousand dollars (\$2,000),  
20 or by both that imprisonment and fine. As a condition of  
21 probation, the court shall order the defendant to perform  
22 a minimum of ~~48~~ 96 hours of community service not to  
23 exceed ~~200~~ 400 hours over a period not to exceed ~~180~~ 350  
24 days during a time other than ~~during~~ his or her hours of  
25 school attendance or employment.

26 (2) *In lieu of the community service required*  
27 *pursuant to paragraph (1), the court may, if a jurisdiction*  
28 *has adopted a graffiti abatement program as defined in*  
29 *subdivision (f) of Section 594, order the defendant, and*  
30 *his or her parents or guardians if the defendant is a minor,*  
31 *as a condition of probation, to keep a specified property*  
32 *in the community free of graffiti for 180 days.*  
33 *Participation of a parent or guardian is not required*  
34 *under this paragraph if the court deems this participation*  
35 *to be detrimental to the defendant, or if the parent or*  
36 *guardian is a single parent who must care for young*  
37 *children.*

38 (c) (1) Every person who, having been convicted  
39 previously under this section or Section 594, 594.3, 594.4,  
40 640.5, or 640.7, or any combination of these offenses, on

1 two separate occasions, and having been incarcerated  
 2 pursuant to a sentence, a conditional sentence, or a grant  
 3 of probation for at least one of the convictions, is  
 4 subsequently convicted under this section, shall be  
 5 punished by imprisonment in a county jail not to exceed  
 6 one year; *by a fine not to exceed three thousand dollars*  
 7 *(\$3,000), or by both that imprisonment and fine.* As a  
 8 condition of probation, the court may order the  
 9 defendant to perform community service not to exceed  
 10 ~~300~~ 600 hours over a period not to exceed ~~240~~ 480 days  
 11 during a time other than ~~during~~ his or her hours of school  
 12 attendance or employment.

13 (2) *In lieu of the community service that may be*  
 14 *ordered pursuant to paragraph (1), the court may, if a*  
 15 *jurisdiction has adopted a graffiti abatement program as*  
 16 *defined in subdivision (f) of Section 594, order the*  
 17 *defendant, and his or her parents or guardians if the*  
 18 *defendant is a minor, as a condition of probation, to keep*  
 19 *a specified property in the community free of graffiti for*  
 20 *240 days. Participation of a parent or guardian is not*  
 21 *required under this paragraph if the court deems this*  
 22 *participation to be detrimental to the defendant, or if the*  
 23 *parent or guardian is a single parent who must care for*  
 24 *young children.*

25 (d) Upon conviction of any person under subdivision  
 26 (a), the court, in addition to any punishment imposed  
 27 pursuant to subdivision (a), (b), or (c), at the victim's  
 28 option, may order the defendant to perform the  
 29 necessary labor to clean up, repair, or replace the  
 30 property damaged by that person.

31 (e) If a minor is personally unable to pay any fine  
 32 levied for violating subdivision (a), (b), or (c), the parent  
 33 or legal guardian of the minor shall be liable for payment  
 34 of the fine. A court may waive payment of the fine or any  
 35 part thereof by the parent or legal guardian upon a  
 36 finding of good cause.

37 Any community service which is required pursuant to  
 38 subdivision (a), (b), or (c) of a person under the age of  
 39 18 years may be performed in the presence, and under

1 the direct supervision, of the person's parent or legal  
2 guardian.

3 (f) As used in this section, the term "graffiti or other  
4 inscribed material" includes any unauthorized  
5 inscription, word, figure, mark, or design that is written,  
6 marked, etched, scratched, drawn, or painted on real or  
7 personal property.

8 (g) *The court may order any person ordered to*  
9 *perform community service or graffiti removal pursuant*  
10 *to subdivision (a), (b), (c), or (d) to undergo counseling.*

11 SEC. 3. Section 640.8 is added to the Penal Code, to  
12 read:

13 640.8. Any person who violates Section 594, 640.5, or  
14 640.6, on a freeway, or its appurtenances, including sound  
15 walls, overpasses, overpass supports, guardrails, signs,  
16 signals, and other traffic control devices, is guilty of a  
17 misdemeanor, punishable by imprisonment in a county  
18 jail not to exceed one year, by a fine not to exceed five  
19 thousand dollars (\$5,000), or by both that imprisonment  
20 and fine. As a condition of probation, the court may order  
21 the defendant to perform community service not to  
22 exceed 480 hours over a period not to exceed 420 days  
23 during a time other than his or her hours of school  
24 attendance or employment.

25 SEC. 4. *Section 1.5 of this bill incorporates*  
26 *amendments to Section 640.5 of the Penal Code proposed*  
27 *by this bill and AB 2295. It shall only become operative if*  
28 *(1) both bills are enacted and become effective on or*  
29 *before January 1, 1997, (2) each bill amends Section 640.5*  
30 *of the Penal Code, and (3) this bill is enacted after AB*  
31 *2295, in which case Section 1 of this bill shall not become*  
32 *operative.*

33 SEC. 5. *Section 2.5 of this bill incorporates*  
34 *amendments to Section 640.6 of the Penal Code proposed*  
35 *by this bill and AB 2295. It shall only become operative if*  
36 *(1) both bills are enacted and become effective on or*  
37 *before January 1, 1997, (2) each bill amends Section 640.6*  
38 *of the Penal Code, and (3) this bill is enacted after AB*  
39 *2295, in which case Section 2 of this bill shall not become*  
40 *operative.*

1     *SEC. 6.* No reimbursement is required by this act  
2 pursuant to Section 6 of Article XIII B of the California  
3 Constitution because the only costs that may be incurred  
4 by a local agency or school district will be incurred  
5 because this act creates a new crime or infraction,  
6 eliminates a crime or infraction, or changes the penalty  
7 for a crime or infraction, within the meaning of Section  
8 17556 of the Government Code, or changes the definition  
9 of a crime within the meaning of Section 6 of Article  
10 XIII B of the California Constitution.

11     Notwithstanding Section 17580 of the Government  
12 Code, unless otherwise specified, the provisions of this act  
13 shall become operative on the same date that the act  
14 takes effect pursuant to the California Constitution.

